

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

ZEBADIAH E. BOWDEN,

Plaintiff,

Case No. 3:12-cv-028

-vs-

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

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XENIA POLICE DEPARTMENT,  
et al.,

Defendants.

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**REPORT AND RECOMMENDATIONS**

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This case is before the Court on Motion of Defendants City of Xenia, Matthew Dray, and Terry Zoerb (the “Xenia Defendants”) to Dismiss for Lack of Prosecution or to Compel Discovery and enter a New Scheduling Order (Doc. No. 14). The attached memorandum explains that the Xenia Defendants’ discovery requests have gone unanswered and Plaintiff has never filed the required disclosures under Fed. R. Civ. P. 26, despite a deadline for doing so of March 30, 2012, set in the Preliminary Pretrial Conference Order (Doc. No. 8). The docket itself discloses that Plaintiff has never disclosed any lay witnesses, despite a deadline of June 15, 2012.

*Id.*

Upon the filing of that Motion, the Court ordered Plaintiff to show cause not later than August 31, 2012, why this case should not be dismissed for want of prosecution. Plaintiff has

filed nothing in response. It is accordingly recommended that this case be dismissed without prejudice for want of prosecution.

September 10, 2012.

s/ *Michael R. Merz*  
United States Magistrate Judge

## **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed.R.Civ.P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed.R.Civ.P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed.R.Civ.P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See, United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).